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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re the Marriage of TRACY and SCOTT
MILLER.

TRACY MILLER,

Respondent,

v.

SCOTT MILLER,

Appellant.

D046999

(Super. Ct. No. ED056633)

APPEAL from an order of the Superior Court of San Diego County, DeAnn M.

Salcido, Judge. Affirmed.

Scott Miller appeals an order of the family court which he contends denied his request to set aside the court's prior ruling denying his request for reconsideration of an order regarding his obligation to pay child support to his former wife, Tracy. Scott argues that the court erred in denying his request to set aside the reconsideration order because the underlying support order resulted from a hearing at which his attorney failed

to represent him. He also seeks an order precluding the trial judge from presiding over this case in the future. Because Scott has not provided us with an adequate record on which to assess his contentions, we affirm the order and deny his request for additional relief.

DISCUSSION

For purposes of appeal, we must presume that the order is correct and indulge all intendments and presumptions in favor of its correctness. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) As the appellant, Scott has the burden of overcoming this presumption of correctness and must provide an adequate record demonstrating the alleged errors. (*Gee v. American Realty & Construction, Inc.* (2002) 99 Cal.App.4th 1412, 1416.) To meet this burden, Scott is required to designate a record that includes all materials presented in the proceedings below that are necessary to a determination of the merits of his contentions. (See *In re Marriage of Gabriel* (1975) 50 Cal.App.3d 556, 558.)

In support of his appeal, Scott designated a record that consists solely of the notice of appeal, an amended notice of appeal, the notice designating the record on appeal, the minute order dated July 26, 2005 denying Scott's motion "to set aside pursuant to CCP 473(b)" and the reporter's transcript of the hearing at which the motion was denied. Scott did not include in his designation any filings made in connection with the set aside motion (including the motion itself) or any evidence submitted in support of the motion or opposition thereto.

On such a record, we have no way of discerning what Scott's motion sought to set aside and no basis for assessing the merit of the contentions raised in his appellate brief.

In accordance with the foregoing authorities, we must presume that the trial court's order denying his motion was correct and thus affirm the order. (*Rancho Santa Fe Assn. v. Dolan-King* (2004) 115 Cal.App.4th 28, 46 ["[w]here the party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him"].) For the same reason, we also deny his request for extraordinary relief.

DISPOSITION

The order is affirmed and Scott's request for an order disqualifying the trial judge is denied. Tracy is awarded her costs of appeal.

McINTYRE, J.

WE CONCUR:

NARES, Acting P. J.

McDONALD, J.